

Assembly Bill No. 2801

CHAPTER 246

An act to amend Sections 24045.5 and 24045.85 of the Business and Professions Code, relating to alcoholic beverages.

[Approved by Governor August 24, 2002. Filed with
Secretary of State August 26, 2002.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2801, Chavez. Alcoholic beverages: licenses: distilled spirits.

Existing law authorizes the Department of Alcoholic Beverage Control to issue temporary permits to transferees of licenses to operate premises during the pendency of the transfer process.

Existing law requires that purchases of beer and wine by the holder of a temporary permit be made before or at the time of delivery in currency or by check, but modifies this requirement to specify a certified check for purchases of distilled spirits.

This bill would allow purchases of distilled spirits by the holder of a temporary permit to be made in the same manner as purchases by that permitholder of beer and wine.

Existing law permits the Department of Alcoholic Beverage Control to issue a special on-sale beer and wine license to a nonprofit symphony association meeting specified criteria.

This bill would also permit the issuance of an on-sale distilled spirits license to a symphony association meeting the same criteria.

The people of the State of California do enact as follows:

SECTION 1. Section 24045.5 of the Business and Professions Code is amended to read:

24045.5. The department in its discretion may issue a temporary permit to the transferee of any license to continue the operation of the premises during the period a transfer application for the license from person to person at the same premises is pending and when all the following conditions exist:

(a) The premises shall have been operated under a license within 30 days of the date of filing the application for a temporary permit.

(b) The license for the premises shall have been surrendered pursuant to rules of the department.

(c) The applicant for the temporary permit shall have filed with the department an application for transfer of the license at the premises to himself or herself.

(d) The application for the temporary permit shall be accompanied by a temporary permit fee of one hundred dollars (\$100).

A temporary permit issued by the department pursuant to this section shall be for a period not to exceed 120 days. A temporary permit may be extended at the discretion of the department for an additional 120-day period upon payment of an additional fee of one hundred dollars (\$100) and upon compliance with all conditions required herein. A temporary permit is a conditional permit and authorizes the holder thereof to sell the alcoholic beverages as would be permitted to be sold under the privileges of the license for which the transfer application has been filed with the department.

Purchase of beer, wine, and distilled spirits by the holder of a temporary permit shall be made only upon payment before or at the time of delivery in currency or by check. However, the holder of a temporary retail permit who also holds one or more retail licenses and is operating under the retail license or licenses in addition to the temporary permit, and who is not delinquent under the provisions of Section 25509 as to any retail license under which he or she operates, may purchase alcoholic beverages on credit under the temporary permit.

All checks received by a seller for alcoholic beverages purchased by the holder of a temporary retail permit shall be deposited not later than the second business day following the date the alcoholic beverages are delivered.

A check dishonored on presentation shall not be deemed payment. The receipt by the seller or his or her agent in good faith from a holder of a temporary permit of a check dishonored on presentation shall not be cause for disciplinary action against the seller.

Transfer of the license for which the holder of a temporary permit has filed an application shall not be approved by the department until the holder of the temporary permit has filed with the department a statement executed under penalty of perjury that all current obligations have been discharged, and that all outstanding checks issued by him or her in payment for alcoholic beverages will be honored on presentation.

It shall not be a violation of this section or otherwise grounds for disciplinary action for any licensee to extend credit to the holder of a temporary permit or to receive payment from the permittee in a manner other than authorized herein unless the seller had knowledge of the fact that the purchaser was operating under a temporary permit. Knowledge of the fact may be established by evidence, including, but not limited to, evidence that, at the time of receipt of payment or the extension of credit,



the premises operated under a temporary permit were posted with the notice required by Section 23985, or the holder of the temporary permit had recorded notice as required by Section 24073, or the holder of the temporary permit had published notice as required by Section 23986, or the holder of the temporary permit had recorded and published notice pursuant to Division 6 (commencing with Section 6101) of the Commercial Code.

Refusal by the department to issue or extend a temporary permit shall not entitle the applicant to petition for the permit pursuant to Section 24011, or to a hearing pursuant to Section 24012. Articles 2 (commencing with Section 23985) and 3 (commencing with Section 24011) shall not apply to temporary permits.

Notwithstanding any other provision of law, a temporary permit may be canceled or suspended summarily at anytime if the department determines that good cause for the cancellation or suspension exists. Chapter 8 (commencing with Section 24300) shall not apply to temporary permits.

Application for a temporary permit shall be on any form the department shall prescribe. If an application for temporary permit is withdrawn before issuance or is refused by the department, the fee which accompanied the application shall be refunded in full, and Section 23959 shall not apply. Fees received by the department for issuance of temporary permits shall be deposited in the Alcohol Beverage Control Fund as provided in Section 25761.

SEC. 2. Section 24045.85 of the Business and Professions Code is amended to read:

24045.85. The department may issue a special on-sale beer, wine, or distilled spirits license to any symphony association organized as a nonprofit corporation more than 30 years before the date of application and which is exempt from the payment of income taxes under Section 23701d of the Revenue and Taxation Code and Section 501(c)(3) of the Internal Revenue Code of 1954 of the United States.

A symphony association holding a license under this section may sell and serve alcoholic beverages only to persons attending concerts on the licensed premises. Sales of alcoholic beverages shall only be permitted, subject to Section 25631, during the period commencing two hours before the performance and ending one hour after the performance.

The applicant for a license shall accompany the application with an original fee of three hundred dollars (\$300) and shall pay an annual renewal fee as provided in Section 23320.

Original licenses may be issued pursuant to this section until January 1, 1987; thereafter no new licenses shall be issued. Licenses originally



issued pursuant to this section prior to January 1, 1987, may continue to be renewed annually by the holder thereof.

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